

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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In the Matter of )  
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Shentel Telecommunications Company )  
 )

Emergency Petition for Finding of Bad )  
Faith Retransmission Consent )  
Negotiations and Enforcement of )  
Customer Notice Rules )  
 )

File No. CSR-\_\_\_\_\_

MB Docket No. 12-1

ACC Licensee, Inc.  
WJLA-TV, Washington, D.C.

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To: The Secretary's Office  
Attn: The Media Bureau

**EMERGENCY PETITION FOR FINDING OF BAD FAITH  
RETRANSMISSION CONSENT NEGOTIATIONS  
AND FOR ENFORCEMENT OF CUSTOMER NOTICE RULES**

**ACC LICENSEE, INC.**

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Its Attorneys

January 5, 2012

## **SUMMARY**

Since January 1, 2012, Shentel Telecommunications Company (“Shentel”) has deprived more than 8,000 Northern Virginia cable customers of long relied-upon service from WJLA-TV (“WJLA”), their in-market ABC affiliate. This result is the culmination of Shentel’s quintessentially bad faith negotiating strategy, which violates Section 325(b)(3)(C) of the Communications Act (the “Act”) and Section 76.65(b) of the Commission’s rules. In short, Shentel proposed retransmission consent terms and, when Allbritton accepted those terms, Shentel withdrew the offer, dropped WJLA-TV with insufficient notice, and has refused Allbritton’s further efforts to negotiate. If Shentel’s actions in this case don’t constitute bad faith negotiations, then the Act and the Commission’s rules provide no effective protection for parties seeking in good faith to negotiate retransmission consent.

To remedy Shentel’s bad faith and unlawful conduct, ACC Licensee, Inc. (“Allbritton”), licensee of WJLA, hereby petitions the Commission, pursuant to 47 C.F.R. § 76.7, to grant immediate emergency relief in the form of an order requiring Shentel to agree to carry WJLA on the terms Shentel itself proposed. WJLA also requests, pursuant to Section 1.41 of the Commission’s rules, that the Commission move swiftly to commence an enforcement action against Shentel for its violations of Section 325 of the Act and Section 76.65(b), as well as the notice provisions of Sections 76.1601 and .1603 of the Commission’s rules. Nothing less is required to protect the integrity of the retransmission consent process against Shentel’s flagrant violations of the statute and the rules.

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Since January 1, 2012, Shentel Telecommunications Company ("Shentel") has deprived more than 8,000 Northern Virginia cable customers of long relied-upon service from WJLA-TV ("WJLA"), their in-market ABC affiliate. This result is the culmination of Shentel's quintessentially bad faith negotiating strategy, which violates Section 325(b)(3)(C) of the Communications Act (the "Act") and Section 76.65(b) of the Commission's rules.<sup>1</sup> In short, Shentel proposed retransmission consent terms and, when Allbritton accepted those terms, Shentel withdrew the offer, dropped WJLA-TV with insufficient notice, and has refused Allbritton's further efforts to negotiate. If Shentel's actions in this case don't constitute bad faith negotiations, then the Act and the Commission's rules provide no effective protection for parties seeking in good faith to negotiate retransmission consent.

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<sup>1</sup> 47 U.S.C. § 325(b)(3)(C); 47 C.F.R. § 76.65(b).

To remedy Shentel's bad faith and unlawful conduct, ACC Licensee, Inc. ("Allbritton"), licensee of WJLA, hereby petitions the Commission, pursuant to 47 C.F.R. § 76.7, to grant immediate emergency relief in the form of an order requiring Shentel to agree to carry WJLA on the terms Shentel itself proposed. WJLA also requests, pursuant to Section 1.41 of the Commission's rules,<sup>2</sup> that the Commission move swiftly to commence an enforcement action against Shentel for its violations of Section 325 of the Act and Section 76.65(b), as well as the notice provisions of Sections 76.1601 and .1603 of the Commission's rules.<sup>3</sup> Nothing less is required to protect the integrity of the retransmission consent process against Shentel's flagrant violations of the statute and the rules.

## **I. BACKGROUND AND INTRODUCTION**

For many years, WJLA has been the in-market ABC affiliate carried on Shentel's Shenandoah County, Virginia cable system, which serves approximately 8,200 subscribers.<sup>4</sup> Allbritton notified Shentel on September 8, 2011, that it elected to continue to be carried pursuant to retransmission consent for the 2012-2014 carriage election cycle.<sup>5</sup> The parties exchanged proposals shortly thereafter, with Allbritton proposing a competitive, market-supported per-subscriber rate for retransmission consent.<sup>6</sup> As in most retransmission consent negotiations over the past few years, this per-subscriber rate quickly became the focus of negotiations and the only apparent impediment

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<sup>2</sup> *Id.* at § 1.41.

<sup>3</sup> *Id.* at §§ 76.1601, .1603.

<sup>4</sup> In addition to WJLA, Shentel carries an out-of-market ABC affiliate, WHSV-TV, Harrisonburg, Virginia ("WHSV"), which is significantly viewed in Shenandoah County. *See* Federal Communications Commission, *Significantly Viewed List* at 433, <http://transition.fcc.gov/mb/significantviewedstations031011.pdf>.

<sup>5</sup> *See* Declaration of Kevin P. O'Tool, Vice President, Finance, Allbritton, attached as Exhibit 1 (the "O'Tool Decl."), at Attachment 1.

<sup>6</sup> Negotiations were conducted by email and phone with Allbritton represented by Mr. O'Tool and, on one occasion, Senior Vice President of Legal and Strategic Affairs and General Counsel Jerald N. Fritz. Shentel was represented by David E. Ferguson, Vice President of Customer Services. *See* O'Tool Decl. ¶ 3; *see also* Exhibit 2.

to reaching a deal. Shentel sought a heavy discount from Allbritton's standard rates primarily due to its carriage of out-of market ABC affiliate WHSV, but consistently expressed its desire to continue carrying both WJLA and WHSV. Shentel never suggested before dropping WJLA that carriage of the two stations was an "either-or" proposition.<sup>7</sup>

The parties made several contacts and exchanged offers and counteroffers throughout October and November. By the end of the first full week in December, the parties had established firm positions. On November 10 and December 6, Shentel made and reiterated an offer that was 25 cents below Allbritton's normal asking price (the "November 10 Offer"). Conversely, Allbritton proposed a rate approximately 17 cents per subscriber higher than the November 10 Offer. Allbritton's proposed rate was equal to that Shentel had agreed to pay for Allbritton's Lynchburg, Virginia ABC affiliate, WSET-TV ("WSET"). Shentel never formally rejected Allbritton's offer, never informed Allbritton that Shentel's November 10 Offer was off the table, and never indicated that negotiations were at an impasse.

On December 19, 2011, Allbritton contacted Shentel to determine whether its position had changed and suggested efforts to conclude a deal before the Christmas holiday. The following day, Shentel responded that "[r]egrettably, WJLA and Shentel have not been able to negotiate what we feel is a fair and equitable rate for the carriage of your station," and indicated that Shentel would plan to pull WJLA's signal from its cable systems upon the expiration of the current retransmission consent agreement on December 31, 2011. Again, Shentel neither removed its November 10 Offer from the table nor informed Allbritton that negotiations were terminated. Quite the contrary, on December 21, 2011, Mr. O'Tool spoke with Mr. Ferguson by telephone to express his surprise that

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<sup>7</sup> See O'Tool Decl. ¶ 4.

Shentel was considering dropping WJLA and Mr. Ferguson expressed his willingness to entertain a counteroffer to Shentel's November 10 Offer.<sup>8</sup>

Given the impending holidays and in view of Shentel's carriage of another ABC affiliate, Allbritton elected not to counter, but rather to accept Shentel's November 10 Offer, communicating its acceptance on December 22, 2011. Instead of concluding the deal, however, Shentel simply went silent. After five days passed, Allbritton again contacted Shentel to check on the status of the negotiations, at which point Shentel surprisingly informed Allbritton that it was still considering whether it would agree to a deal on terms that Shentel itself had proposed on multiple occasions and never withdrew.<sup>9</sup>

On December 28, 2011, Shentel indicated its intention to reject its own contract terms, claiming in a phone call that the rates it ended up paying for WHSV limited its ability to pay for WJLA. This came as quite a shock to Allbritton because on December 13, 2011, Chris Kyle a negotiator for Shentel that conducted negotiations with Allbritton for carriage of WSET had asked Randy Smith, President of WSET, Incorporated to convey to Allbritton's "corporate team that we are not paying for out of market DMA subs in our other agreements."<sup>10</sup> Thus, Allbritton had no reason to believe that a deal with out-of-market WHSV could have any impact on the rate Shentel would be willing to pay for retransmission of WJLA. Nonetheless, in the spirit of compromise, Allbritton asked Shentel to name the best rate that it would be willing to pay to retain retransmission

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<sup>8</sup> *Id.* ¶ 7.

<sup>9</sup> *Id.* ¶ 8.

<sup>10</sup> See Email from Chris Kyle, Shentel, to Randy Smith, President, WSET, Inc., dated December 13, 2011, 4:44 pm. The email from Mr. Kyle to Mr. Smith contains substantial amounts of confidential information and Allbritton has refrained from including it as an exhibit for that reason. Nonetheless, the email is available at staff request.

consent of WJLA. Shentel agreed to provide a counteroffer (to its own November 10 Offer) later in the day on December 28 or on December 29.<sup>11</sup>

Late in the morning of December 29, after hearing nothing from Shentel, Allbritton reiterated its commitment to accept Shentel's November 10 Offer and suggested sending execution pages to amend the existing retransmission consent agreement to reflect the new rate. Shentel remained silent and later on December 29, Allbritton contacted Shentel again, asserting that Shentel's refusal to come to terms for retransmission consent on the terms Shentel had proposed constituted bad faith negotiations. Again, Shentel remained silent.<sup>12</sup>

On December 30, Allbritton yet again reached out to Shentel, reminding it that Shentel's right to retransmit WJLA's signal would expire at 11:59 pm on December 31, 2011, expressing disappointment that Shentel had not contacted Allbritton and appeared to be abandoning the parties' long business relationship, and informing Shentel that absent a change of course Allbritton would inform the FCC of Shentel's bad faith conduct. Shentel responded with a terse, 33-word email confirming *for the first time* that Shentel had finally decided to drop WJLA. Shentel promised a full explanation of its decision on January 3, 2012.<sup>13</sup>

Finally, at mid day on New Year's Eve, Allbritton's Senior Vice President for Legal and Strategic Affairs and General Counsel, Jerald N. Fritz, contacted Shentel directly and reiterated Allbritton's position that Shentel's refusal to agree to its own proposal constitutes bad faith negotiations and Allbritton's intention to seek relief at the FCC should Shentel drop WJLA's signal. Hearing nothing from Shentel, Mr. Fritz forwarded this correspondence to Media Bureau staff

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<sup>11</sup> *Id.* ¶ 9.

<sup>12</sup> *Id.* ¶ 10.

<sup>13</sup> *Id.* ¶ 11.

member Nancy Murphy along with a brief description of the situation and gave notice that Allbritton would seek Commission action if Shentel dropped the station.<sup>14</sup>

At or about 11:59 pm on December 31, 2011, Shentel dropped WJLA's signal, replacing it with a slide instructing viewers seeking ABC programming to tune instead to WHSV. As of today, Shentel has failed to provide its promised explanation for its actions.<sup>15</sup>

## **II. ARGUMENT**

### **A. Shentel's Conduct Is the Very Essence of Bad Faith and A Flagrant Violation of the Communications Act and the Commission's Rules.**

Shentel's refusal to agree to retransmit WJLA's signal at the rate Shentel itself proposed and its misrepresentations about the rates it pays for out-of market stations constitute bad faith negotiation in violation of Section 325(b)(3)(C) of the Act and Section 76.65 of the Commission's rules. The Commission evaluates bad faith negotiation claims under a list of specific negotiating standards and also according to the "totality of the circumstances" surrounding the negotiations.<sup>16</sup> Shentel's actions in this case unquestionably constitute bad faith negotiations under both the *per se* and "totality of the circumstances" tests.

Shentel's decision to reject Allbritton's acceptance of Shentel's offer and its failure to make any reasonable counteroffer after December 22, 2011 constitutes a failure to negotiate retransmission consent in violation of Section 76.65(b)(1)(i). Indeed, Shentel's refusal to take "yes" for an answer indicates that Shentel was not sincerely negotiating retransmission consent at all, but was instead stringing Allbritton along through sham negotiations while it concluded negotiations

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<sup>14</sup> See Exhibit 2 (email from Jerald N. Fritz, Senior Vice President for Legal and Strategic Affairs and General Counsel, Allbritton to Nancy Murphy, Associate Chief, Media Bureau, dated Dec. 31, 2011, attaching email from Mr. Fritz to Mr. Ferguson dated Dec. 31, 2011)).

<sup>15</sup> See O'Tool Decl. ¶ 12. On January 3, 2011, outside counsel for Shentel contacted Mr. Fritz by telephone to discuss the impasse between the parties.

<sup>16</sup> See 47 C.F.R. § 76.65(b).

with WHSV. Such conduct amounts to a complete failure to negotiate retransmission consent in violation of the *per se* rules.

Shentel's decision to renege on its own proposal also demonstrates Shentel's bad faith under the Commission's "totality of the circumstances" test.<sup>17</sup> Indeed, it is hard to imagine a more outrageous display of bad faith on the part of a cable operator than to refuse to conclude an agreement based on the terms the operator itself proposed. In this case, Shentel not only reneged on the November 10 Offer (which was reiterated as recently as December 6 and never withdrawn), it even refused to make any counteroffer to Allbritton's attempts to accept that offer, despite its promise to do so. None of Shentel's communications to Allbritton could reasonably be construed as withdrawing the November 10 Offer or breaking off negotiations.<sup>18</sup> Instead, Shentel encouraged Allbritton to jump through hoops to get a deal done, yet when Allbritton had cleared every hoop, Shentel still dropped WJLA's signal.

Moreover, Shentel's supposed justification for its refusal to conclude a deal with Allbritton – that it had been required to pay too much for out-of-market WHSV – directly contradicted its previous representations that Shentel was not paying per-subscriber rates for out-of-market stations.<sup>19</sup> Fundamental to Shentel's duty to abjure bad faith negotiations is a duty to represent its positions honestly. Shentel informed Allbritton that it was not paying for out-of market stations and Allbritton was entitled to rely – and did rely – on that representation in pursuing carriage on

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<sup>17</sup> *Id.* at § 76.65(b)(2).

<sup>18</sup> Shentel cannot argue that its December 20 statement of its intention to drop WJLA's signal constitutes a withdrawal of its November 10 Offer because its own conduct at the time contradicts that position. The very next day, Shentel invited Allbritton to make a counteroffer to the November 10 Offer, which is not the type of behavior that can support a conclusion that Shentel considered the negotiations terminated. If the offer was no longer on the table, what was Shentel asking Allbritton to counter? In any case, threats to drop stations or withhold signals are routine elements of hard fought retransmission consent negotiations; if negotiations were deemed terminated or deals withdrawn every time a party made such a threat, few deals would ever be completed.

<sup>19</sup> *See* n.10, *supra*.

Shentel's systems. As it turns out, it appears that Shentel was either lying to Allbritton in its negotiations for carriage of WSET or lying when it said that the price for WHSV precluded striking a deal for carriage of WJLA.<sup>20</sup> Dishonestly and double dealing are the very essence of bad faith negotiations, and Shentel's conduct in this case exemplifies both.

The Commission wisely stays out of most retransmission consent negotiations and Allbritton applauds the Commission's restraint in allowing market forces to shape retransmission consent terms. In this case, however, Shentel's outrageous conduct mocks the Commission normally prudent abstention and is depriving thousands of Northern Virginia viewers of WJLA service that they have come to rely upon over many years of carriage. Those viewers are entitled to a retransmission consent process that goes by the rules and results in deals where both parties negotiate in good faith. Unfortunately for all concerned in this case, Allbritton had a bad faith partner in these negotiations. Shentel's viewers, however, should not be punished by loss of WJLA service as a result of Shentel's bad faith. This is one of the very few cases that demands FCC intervention. In fact, if the totality of the circumstances in this case does not establish Shentel's bad faith, it is unlikely that any case will ever satisfy that standard.

**B. Shentel's Violated the Commission's Rules by Dropping WJLA Without Issuing Appropriate Notices to Allbritton or Shentel Subscribers.**

Shentel's late December decision to drop WJLA also resulted in insufficient notice to both Allbritton and Shentel's customers in violation of the Commission's rules. Section 76.1601 of the Commission's rules states that "a cable operator shall provide written notice to *any* broadcast television station at least 30 days prior to either deleting from carriage or repositioning that

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<sup>20</sup> Even viewing the evidence as favorably to Shentel as possible, Shentel was disingenuously claiming that it did not pay for out-of-market carriage in order to gain favorable terms for carriage of WSET while at the same time negotiating a per-subscriber fee for WHSV.

station.”<sup>21</sup> Shentel undoubtedly is a “cable operator,” and WJLA is a “broadcast television station.” Therefore, Shentel was required to provide written notice to Allbritton at least thirty days before it deleted WJLA’s signal. Instead, Shentel provided only 11 days notice to Allbritton *via* email that it intended to drop the WJLA.<sup>22</sup> Even that notice was apparently contradicted by Shentel’s communication to Allbritton that it would entertain counteroffers to its latest retransmission consent proposal.<sup>23</sup> Nonetheless, even assuming Shentel’s December 20, 2011, communication expressing its intention to drop WJLA’s signal constituted notice under the Commission’s rules, that notice was 20 days late to satisfy the requirements of Section 76.1601, and Shentel’s conduct constituted a knowing and willful violation of the Commission’s rules.

Shentel also presumably failed to provide the notice required by the Commission’s rules to its own subscribers. Section 76.1603(b) and (c) of the Commission’s rules requires cable operators to give customers 30 days written notice of any channel deletion that is “within the control of the cable operator.”<sup>24</sup> The Commission has explained that “the 30-day notice requirement of section 76.1603 ensures that consumers actually receive the programming they were promised” by their cable operators when they paid their bills in advance for services they had not yet received.<sup>25</sup>

By all appearances, Shentel’s first notice to its customers that it intended to drop WJLA’s signal came in a posting on its website dated December 23, 2011.<sup>26</sup> This 8-day

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<sup>21</sup> 47 C.F.R. § 76.1601. *See also* 47 U.S.C. § 534(b)(9).

<sup>22</sup> *See* O’Tool Decl. ¶ 7.

<sup>23</sup> *See id.*

<sup>24</sup> 47 C.F.R. § 76.1603(b), (c). *See also* 47 C.F.R. § 76.1601 (requiring cable operators to provide subscribers of the deletion or repositioning of any broadcast station). Section 76.1601(c) requires Shentel to provide thirty days’ notice to the local cable franchising authority. Allbritton has no knowledge of whether Shentel complied with this provision, which would be an appropriate subject for Commission inquiry.

<sup>25</sup> *Time Warner Cable, Order on Reconsideration*, 21 FCC Rcd 9016, 9025 at para. 26 (MB 2006) (“*Time Warner/NFL Network Decision*”), *consent decree adopted*, Order, 21 FCC Rcd 11229 (MB 2006).

<sup>26</sup> *See* Exhibit 3.

notice is less than one-third of that required to satisfy Section 76.1603. Shentel cannot claim that its decision to drop WJLA was outside its control. By December 23, 2011, all Shentel had to do to continue carrying WJLA was to accept its own proposed carriage terms.

The Commission also should investigate whether this was the only notice provided to Shentel's customers. If so, it is hardly reasonable or sufficient to give customers actual notice of Shentel's anticipated change. This notice is not a writing provided to the customer, it is simply a webpage that must be sought out by the customer. While cable operators are provided wide discretion in the means of providing written notices required by Section 76.1603,<sup>27</sup> the rule does not permit them to dispense with the writing requirement entirely and provide the notice only to customers that go out of their way seek it.

**C. The Commission Immediately Should Require Shentel to Conclude a Retransmission Consent Agreement Consistent with the November 10 Offer and Commence Enforcement Action Against Shentel.**

Shentel's extreme disregard for the requirements of the Act and the Commission's rules in this case requires the Commission to fashion remedies that will restore the rights of Allbritton and Shentel's subscribers and deter future violations by punishing Shentel's open flouting of the rules. These remedies should include a decision that Shentel's refusal to conclude a retransmission consent deal with Allbritton based on its own proposed terms violates Section 325(b) of the Act and Section 76.65(b) of the Commission's rules. The Commission should further order that the only remedy for Shentel's bad faith is to require it to return to the negotiating table and conclude an agreement based on the terms of the November 10 Offer.

In addition, the Commission should commence an enforcement proceeding to fine Shentel for its bad faith negotiating tactics and investigate the extent to which Shentel has violated the Commission's notice requirements. The Commission's rules do not specify a base forfeiture for

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<sup>27</sup> 47 C.F.R. § 76.1603(e).

bad-faith negotiations, but the base penalty for violations of the television broadcast carriage rules in \$7,500.<sup>28</sup> In considering Shentel's punishment, the Commission should evaluate whether to consider each day WJLA's signal is not carried as a result of bad faith negotiations constitutes a separate violation of the rules. Such a rule would be appropriate in this case to address Shentel's willful violation of the Act and the Commission's rules and would function as a strong deterrent to other cable operators imitating Shentel's actions here.

Moreover, the Commission should fully investigate the extent of Shentel's non-compliance with the Commission's notice requirements. Allbritton lacks necessary information to identify all of those violations, but the Commission could compel Shentel to provide evidence of its notice to customers and local franchising authorities. In any case, Shentel clearly violated its duty to provide Allbritton with sufficient notice of its intent to drop WJLA. The Commission has recognized in the past that under similar circumstances, \$7,500 is a reasonable base forfeiture for such violations.<sup>29</sup> Depending upon the circumstances uncovered by the Commission's investigation, \$7,500 likely will be a reasonable base forfeiture in this case for each of Shentel's failure to properly notify Allbritton under Section 76.1601, its failure to notify customers under Section 76.1603, and any other notice violations the Commission identifies.

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<sup>28</sup> 47 C.F.R. § 1.80 (note to paragraph (b)(4)).

<sup>29</sup> See, e.g., *Time Warner Cable, Inc.*, 24 FCC Rcd 1064 (EB 2009) (\$7,500 fine for failing to notify customers of change in programming service) (citing *Northland Cable Television, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7865 (Media Bur. 2008) (proposing \$20,000 forfeiture for apparent violations of Section 76.1603 and other rules); *Northland Cable Television, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7872 (Media Bur. 2008) (same)).

### **III. CONCLUSION**

For the foregoing reasons, Allbritton requests that the Commission grant the relief requested herein to maintain the integrity of the Act, the Commission's rules, and the retransmission consent negotiation process.

Respectfully submitted,

**ACC Licensee, Inc.**

A handwritten signature in black ink, appearing to read "Kevin P. Latek", written over a horizontal line.

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Its Attorneys.

January 5, 2012

# **EXHIBIT**

## **1**

**DECLARATION OF KEVIN P. O'TOOL**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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Enforcement of Customer Notice Rules	)	
	)	
ACC Licensee, Inc.	)	
WJLA-TV, Washington, D.C.	)	

To: The Secretary's Office  
Attn: The Media Bureau

**DECLARATION OF KEVIN P. O'TOOL**

1. My name is Kevin P. O'Tool, and I am the Vice President of Finance for Allbritton Communications Company ("Allbritton"). As part of my duties, I represent Allbritton in retransmission consent negotiations for television station WJLA-TV, Washington, D.C., with multichannel video programming distributors, including cable operators, that provide service to the Washington, D.C. Designated Market Area. I have been participating in retransmission consent negotiations for 10 years.
  
2. In the performance of my duties, I represented Allbritton in its retransmission consent negotiations with Shentel Telecommunications Company ("Shentel") between September and December of 2011. I have first hand knowledge of all the correspondence and telephone communications that comprised the parties' negotiations. I have reviewed the foregoing Emergency Petition for Finding of Bad Faith Retransmission Consent Negotiations and for Enforcement of Customer Notice Rules and declare that the facts contained therein regarding the negotiations between Allbritton and Shentel are true and correct.
  
3. On September 8, 2011, I sent the Cable-Telco Election Notice attached as Attachment 1 to Shentel ("the "Notice"), electing retransmission consent for WJLA-TV for the 2012-2014 carriage election cycle. As further reflected in Attachment 1, Shentel confirmed its receipt of the Notice by letter dated September 15, 2011. Throughout the negotiations, which were conducted by email and phone, I represented Allbritton, and Shentel was represented by David E. Ferguson, Vice President of Customer Services.
  
4. Following the Notice, Mr. Ferguson and I exchanged proposals, with Allbritton proposing a competitive, market-supported per-subscriber rate for retransmission consent. As in most retransmission consent negotiations over the past few years, the per-subscriber rate quickly became the focus of negotiations and the only apparent impediment to reaching a deal. Shentel sought a heavy discount from Allbritton's standard rates primarily due to it's carriage of out-of market ABC

affiliate WHSV, but consistently expressed its desire to continue carrying both WJLA and WHSV. Shentel never suggested before dropping WJLA that carriage of the two stations was an “either-or” proposition.

5. Mr. Ferguson and I made several contacts and exchanged offers and counteroffers throughout October and November. By the end of the first full week in December, we had established firm positions. On November 10 and December 6, Mr. Ferguson conveyed and then reiterated an offer that was 25 cents below Allbritton’s normal asking price (the “November 10 Offer”). Conversely, I proposed a rate approximately 17 cents per subscriber higher than Shentel’s proposal, which was the same rate that Shentel had agreed to pay for Allbritton’s Lynchburg, Virginia ABC affiliate, WSET-TV. To my knowledge, neither Mr. Ferguson nor anyone else at Shentel ever communicated to Allbritton any formal rejection of Allbritton’s offer, informed Allbritton that Shentel’s November 10 Offer was off the table, or indicated that negotiations were at an impasse.

6. On December 19, 2011, I contacted Mr. Ferguson to determine whether Shentel’s position had changed and suggested efforts to conclude a deal before the Christmas holiday. The following day, Mr. Ferguson responded through an email that “[r]egrettably, WJLA and Shentel have not been able to negotiate what we feel is a fair and equitable rate for the carriage of your station,” and indicated that Shentel would plan to pull WJLA’s signal from its cable systems upon the expiration of the current retransmission consent agreement on December 31, 2011. Again, Mr. Ferguson did not remove Shentel’s November 10 Offer from the table nor inform me that negotiations were terminated. In fact, on December 21, 2011, I spoke with Mr. Ferguson by telephone to express my surprise that Shentel was considering dropping WJLA, and Mr. Ferguson expressed his willingness to entertain a counteroffer to Shentel’s November 10 Offer.

7. After internal discussions, and in view of the impending holidays and Shentel’s carriage of another ABC affiliate, Allbritton elected not to counter, but rather to accept Shentel’s November 10 Offer. I communicated Allbritton’s acceptance in an email to Mr. Ferguson on December 22, 2011. I did not hear from Mr. Ferguson for the following five days. On December 27, 2011, I contacted Mr. Ferguson again to check on the status of negotiations. Mr. Ferguson informed me that Shentel was still considering whether to conclude an agreement based on the November 10 Offer.

8. On December 28, 2011, Mr. Ferguson informed me of Shentel’s intention to reject its own contract terms, claiming in a phone call that the rates it ended up paying for WHSV limited its ability to pay for WJLA. In response, I asked Shentel to name the best rate that it would be willing to pay to retain retransmission consent of WJLA. Shentel agreed to provide a counteroffer later in the day on December 28 or on December 29.

9. Late in the morning of December 29, after hearing nothing from Shentel, I reiterated in an email to Mr. Ferguson Allbritton’s commitment to accept Shentel’s November 10 Offer and suggested sending execution pages to amend the existing retransmission consent agreement to reflect the new rate. Shentel remained silent and later on December 29, I contacted Mr. Ferguson again, asserting to him that Shentel’s refusal to come to terms for retransmission consent on the terms Shentel had proposed constituted bad faith negotiations. Again, Shentel remained silent.

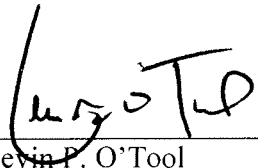
10. On December 30, I again reached out to Mr. Ferguson, reminding him that Shentel’s right to retransmit WJLA’s signal was to expire at 11:59 pm on December 31, 2011, expressing disappointment that Shentel had not contacted Allbritton and appeared to be abandoning the parties’ long business relationship, and informing him that absent a change of course Allbritton would inform

the FCC of Shentel's bad faith conduct. Shentel responded with a terse, 33-word email confirming *for the first time* that Shentel had finally decided to drop WJLA and promised a full explanation of its decision on January 3, 2012.

11. It is my understanding that at or about 11:59 pm on December 31, 2011, Shentel dropped WJLA's signal. I have been informed that Shentel replaced WJLA's signal with a slide instructing viewers seeking ABC programming to tune instead to WHSV. As of today, Shentel has failed to provide its promised explanation for its actions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2012



---

Kevin P. O'Tool  
Vice President, Finance  
Allbritton Communications Company

# ATTACHMENT

1

RETRANSMISSION CONSENT  
ELECTION LETTER



P.O. Box 459 • Edinburg, Virginia 22824-0459 • (540) 984-4141

September 15, 2011

Mr. Kevin P. O'Tool  
WJLA-TV  
1100 Wilson Blvd., 6<sup>th</sup> Floor  
Arlington, VA 22209

Re: Retransmission Consent/Must Carry Election

Dear Mr. O'Tool:

We are in receipt of your notice dated September 8, 2011 electing retransmission consent of WJLA with respect to Shenandoah Cable Television Company ("Shentel"). Shentel would like to continue its carriage of WJLA in certain of its systems through December 31, 2014. Please send your proposed retransmission agreement to the following address at your earliest convenience:

Shentel  
Attn: Sarah Krasley  
500 Shentel Way  
P.O. Box 459  
Edinburg, VA 22824

If you have any questions, please feel free to contact (540) 984-3273.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Ferguson", with a long, sweeping horizontal line extending to the right.

David E. Ferguson

DEF/sak

LOCAL AND LONG DISTANCE TELEPHONE • INTERNET AND DATA SERVICES • CABLE TELEVISION  
WIRELESS VOICE AND DATA SERVICES • ALARM MONITORING • TELECOMMUNICATIONS EQUIPMENT

WE MUST SERVE WELL TO PROSPER • WE MUST PROSPER TO SERVE WELL

# CABLE-TELCO ELECTION NOTICE

CALL LETTERS	COMMUNITY OF LICENSE	DMA TO WHICH NIELSEN MEDIA RESEARCH ASSIGNED STATION IN 2009-10 NSI
WJLA-TV	WASHINGTON DC	WASHINGTON DC
DTV CHANNEL (OVER THE AIR)	PRIMARY CHANNEL (VIRTUAL CHANNEL, E.G., 15.1)	LICENSEE NAME
7	7.1	ACC LICENSEE, INC.

This Cable Election Notice is sent this 8th day of September 2011 via Certified Mail/Return Receipt Requested (Receipt Number \_\_\_\_\_) to the following:

Operator: Shenandoah Cable Television Company  
Address: 106 S. Main St.  
Edinburg, VA 22824  
Attention: David E. Ferguson

With respect to all communities within the Station's "television market" (as defined in 47 C.F.R. § 76.55(e)) served by cable systems owned or managed by your company (including those listed in our current retransmission consent agreement and including those listed EXHIBIT A hereto) between January 1, 2012, and December 31, 2014, the **Licensee elects the retransmission consent status** for the primary video stream of the Station's digital signal.

Further, we hereby notify you of our election not to renew, extend, or roll-over the term of any of retransmission consent agreement that may be in place between our companies at this time.

For further information or to request consent to the retransmission of any program stream to which a "must-carry" election does not apply, please contact:

Name: Kevin P. O'Tool  
Address: WJLA-TV  
1100 Wilson Blvd., 6<sup>th</sup> Floor  
Arlington, VA 22209  
Phone: 703-236-9202  
Email: kotool@wjla.com

The Licensee provides this Election Notice pursuant to 47 C.F.R. Section 76.64.

Signature:   
Name/Title: Kevin P. O'Tool/VP Finance

# CABLE-TELCO ELECTION NOTICE

## Exhibit A

CALL LETTERS	COMMUNITY OF LICENSE	LICENSEE
WJLA-TV	Washington DC	ACC Licensee, Inc.

Communities in the Station's television market that are covered by the Cable Election Notice to which this Exhibit A is attached:

Edinburg, VA

# **EXHIBIT**

**2**

**EMAIL FROM JERALD N. FRITZ TO  
NANCY MURPHY**

---

**From:** Fritz, Jerry  
**Sent:** Saturday, December 31, 2011 12:45 PM  
**To:** 'Nancy.Murphy@fcc.gov'  
**Cc:** Claire Magee ; 'Latek, Kevin'  
**Subject:** FW: Retransmission Consent - WJLA-TV - Shenandoah County  
**Importance:** High

Nancy,

The good news is that WJLA and all other Allbritton-affiliated stations have reached agreement with all MVPDs for continued carriage of those stations – except one.

Shentel operates a cable system in the western part of the Washington DMA serving approximately 8,200 subscribers. It has carried WJLA-TV, the ABC affiliate, for many years. After several rounds of negotiations relating to subscriber fees, WJLA accepted - in writing – Shentel's offer for continued carriage. Shentel then informed WJLA that, since it carries the significantly viewed ABC station in Harrisonburg, WHSV, on its system, it no longer wanted to carry WJLA and reneged on its offer to carry our station.

Obviously, it is hard to imagine a more blatant example of bad faith negotiations – withdrawal of an offer after it has been accepted. We continue to hope that Shentel will meet its obligations and retain WJLA on its system. We will know at midnight tonight. If WJLA is, in fact dropped in an effort to pursue a “better” deal after WJLA has accepted the Shentel offer, we will be back to the Commission seeking quick action to enforce the good faith negotiation provisions of the Act.

Please let me know if you have questions.

Jerry

Jerald N. Fritz  
Senior Vice President  
Legal and Strategic Affairs and General Counsel  
Allbritton Communications Company  
1000 Wilson Blvd.  
Suite 2700  
Arlington, VA 22209  
Ph: 703-647-8747

[jfritz@allbrittontv.com](mailto:jfritz@allbrittontv.com)

---

**From:** Fritz, Jerry  
**Sent:** Saturday, December 31, 2011 12:33 PM  
**To:** 'David.Ferguson@emp.shentel.com'  
**Cc:** 'Nancy.Murphy@fcc.gov'; 'Latek, Kevin'; Magee, Claire; Ryan, Fred; Gibson, Steve;

1/5/2012

Lord, Bill; Killen, James; 'Kevin O'Tool'

**Subject:** Retransmission Consent - WJLA-TV - Shenandoah County

**Importance:** High

Mr. Ferguson,

I am General Counsel to Allbritton Communications Company, owner and operator of WJLA-TV, Washington, DC. We have been informed that, after WJLA confirmed acceptance of Shentel's offer for continued carriage of WJLA on Shentel's cable system in Shenandoah County, Virginia, Shentel reneged on that offer and has subsequently threatened to drop WJLA from its system.

Please be advised that such action is statutorily precluded. Withdrawal of an accepted offer is the very essence of "bad faith" bargaining. Should WJLA be dropped by Shentel, we will vigorously pursue all legal action against Shentel at the FCC and otherwise.

We await confirmation that WJLA will not be dropped from the Shentel system.

Jerald Fritz

Jerald N. Fritz  
Senior Vice President  
Legal and Strategic Affairs and General Counsel  
Allbritton Communications Company  
1000 Wilson Blvd.  
Suite 2700  
Arlington, VA 22209  
Ph: 703-647-8747

[ifritz@allbrittontv.com](mailto:ifritz@allbrittontv.com)

# **EXHIBIT**

**3**

**ONLINE NOTICE TO SUBSCRIBERS**



## History

## Legal

## News

### [Information about Broadcast Channel Negotiations](#)

[Shentel Supports Blackstone Annual Christmas Parade](#)

[Shentel and HISTORY® Bring Local Veterans to Lewis County High School](#)

[Shentel Launches Improved Cable TV in Franklin County](#)

[Improved Cable TV and DVR Options for Wytheville](#)

[Shentel sponsoring and exhibiting at Southern Virginia Business Expo](#)

[Free Admission to Autumn Harvest Festival, Courtesy of Shentel](#)

[Free Wi-Fi Service For Russell County Fair](#)

[5th Annual Sip-n-Shag Beach Bash](#)

[National Night Out in Pulaski](#)

[New Store in Bedford](#)

[Grant County Hosts Softball Tournament](#)

[Kids & Pros™ Sports Football Camp](#)

[Covington High School Alumni Game](#)

[Home](#) > [Shentel](#) > [News](#) > Information about Broadcast Channel Negotiations

## Information about Broadcast Channel Negotiations

12-23-2011

Cable operators are required to pay Retransmission fees (shows up on your bill as Broadcast TV Surcharge) for the right to carry the Big Four stations (NBC, ABC, CBS and Fox). These are the same channels that consumers, if close enough to the station, can pick up on an antenna for free. As a result of outdated laws and regulations governing Retransmission fees, many stations are demanding excessive price increases (some exceed 10 times) from companies like Shentel. In turn, we will be forced to pass on these higher fees to our customers. We believe this is unfair and unreasonable.

As your advocate, Shentel will not allow unreasonable station owners to force these dramatic rate increases that impact the overall prices to our customers. If we are unable to reach a fair compromise with station owners, Shentel will be required to remove those stations in January 2012.

### **Shentel will be forced to drop the following station from our cable line-ups effective January 1, 2012:**

Shentel has tried to negotiate in good faith with the management of this television station to agree on a fair price for their programming. Negotiations have failed and this channel will go dark on January 1, 2012.

Station	Affected Areas
WJLA (ABC)	Shenandoah County, Petersburg

### **Shentel *may* be forced to drop the following stations from our cable line-ups effective January 1, 2012:**

Shentel has been negotiating in good faith to carry the following channels after December 31, 2011. The negotiations are not complete, however, and if Shentel is unable to negotiate a fair price, these channels will go dark on January 1, 2012.

Station	Affected Areas
WTTG (FOX)	Shenandoah County, Petersburg

We apologize for any inconvenience or service interruptions these negotiations may cause. We appreciate your business and will provide updates as we progress with the negotiations. We are working hard to keep your bill for television programming affordable.

[Programming Increase FAQ's](#)

## CERTIFICATE OF SERVICE

I certify that on this 5th day of January, 2012, I caused the foregoing Emergency Petition for Finding of Bad Faith Retransmission Consent Negotiations and for Enforcement of Customer Notice Rules to be served by first-class mail, except where hand delivery is indicated, on the following:

William T. Lake\*  
Chief, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Michelle Carey\*  
Deputy Chief, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Mary Beth Murphy\*  
Chief, Policy Division, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Ronald Parver\*  
Assistant Chief, Policy Division, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Steven Horovitz  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006

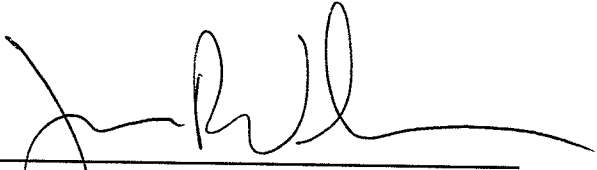
Suzanne M. Tetreault\*  
Acting Chief, Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Nancy Murphy\*  
Associate Chief, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Steven A. Broeckaert\*  
Deputy Chief, Policy Division, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

David E. Ferguson  
Sarah Krasley  
500 Shentel Way  
P.O. Box 459  
Edinburg, VA 22824

\* via email

  
\_\_\_\_\_  
Jason E. Rademacher